

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/03/2004

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THE HON'BLE MR.JUSTICE C.NAGAPPAN

WRIT PETITION No.16536 of 1996

Union of India,
Owning Integral Coach Factory,
rep.by its General Manager,
Madras-600 038. ... Petitioner

-Vs-

1. The Presiding Officer,
Industrial Tribunal,
Madras.

2. S.Chinnappan ... Respondents

Writ petition under Article 226 of the Constitution of India
praying for issuance of writ of certiorari as stated therein.

!For petitioner .. Mr.V.Radhakrishnan

^For Respondents .. Mr.R.Lawrance for R-2
Industrial Tribunal R-1

:ORDER

The petitioner has sought for issuance of writ of certiorari
to quash the Award, dated 09.11.1988, passed by the first respondent Tribunal
in I.D.No.69 of 1987.

2. The second respondent was appointed as a Sanitary Cleaner
in the Integral Coach Factory on 15.06.1972 and he continued in that post
during May, 1974. A complaint was registered against the second respondent
under Section 3(a) of the Railway Property (Unlawful Possession) Act by the
Assistant Sub-Inspector, Korukkupet and he was prosecuted before the
VII-Metropolitan Magistrate, Madras. The second respondent was found guilty
of the offence, however he was released under Section 4(1) of the Probation of
Offenders Act.

Thereafter, disciplinary proceedings were initiated
against the second respondent based on his conviction in the criminal court
and he was removed from service with effect from 23.01.1975. Subsequently,
the second respondent gave a representation to the General Manager and it was
considered afresh after giving notice to him and he was removed from service

with effect from 17.01.1979 by the order passed in exercise of the power conferred under Rule 14(1) of the Railway Servants (Discipline & Appeal) Rules, 1968. Against the order of removal, the second respondent preferred appeal and the same was rejected.

At the instance of the second respondent, conciliation proceedings were initiated and the Central Government made a reference to Central Government Industrial Tribunal, Madras and the same was referred to the first respondent and taken on file in I.D.No.69 of 1987. The first respondent Tribunal held that the removal of the second respondent from service was not justified and set aside the order of removal and directed the petitioner to reinstate the second respondent in service. Against that award, the petitioner filed Writ Petition No.5184 of 1989 and on 17.11.1994, the case bundle was returned to the petitioner to be presented before the Central Administrative Tribunal and the Administrative Tribunal, by order dated

10.04.1996, held that it has no jurisdiction to entertain the petition against the order of Labour Court and hence the petitioner has filed the present writ petition challenging the Award as illegal.

3. The second respondent has filed a counter stating that though he was convicted in the criminal case, he was released under Section 4(1) of the Probation of Offenders Act, 1958 and he challenged the order of removal from service by preferring appeal and that came to be dismissed and the review filed by him was rejected and the Industrial Tribunal held that as per Section 12 of the Probation of Offenders Act, there is no bar for continuing in service. It is further stated in the counter that Section 11(A) of the Industrial Disputes Act is also applicable and the Award is sustainable.

4. Heard the learned counsel for the petitioner as well as the learned counsel for the second respondent.

5. The learned counsel for the petitioner contends that the finding of the Industrial Tribunal that the order of the learned Magistrate releasing the second respondent on probation obliterates the stigma of conviction cannot be sustained and the Tribunal has misconstrued the scope of Section 12 of the Probation of Offenders Act. It is further contended by the learned counsel for the petitioner that the Industrial Tribunal has failed to note that the decision of the Supreme Court in *The Divisional Personal Officer vs. T.R.Challappan* - AIR 19 75 SC 2216, has been over ruled by the Constitution Bench in *Tulsiram Patel* case (AIR 1985 SC 1416), with regard to the scope of Rule 14 of the Railway Servants (Discipline & Appeal) Rules, 1968 and the Award is liable to be set aside. Per contra, the learned counsel for the second respondent contends that under Section 12 of the Probation of Offenders Act a person found guilty shall not suffer disqualification attached to a conviction of offence and the Industrial Tribunal considered Section 12 of the Act in proper perspective and also held that no enquiry was conducted while removing the second respondent from service and hence the removal is bad in law.

6. Admittedly, the petitioner was found guilty under Section 3(a) of the Railway Property (Unlawful Possession) Act and he was released under Section 4(1) of the Probation of Offenders Act to observe good behaviour for a period of one year. The Industrial Tribunal in the impugned Award held that a person released under the Probation of Offenders Act should not be treated as a person convicted of an offence for the purpose of reinstatement in service, since he shall not suffer any disqualification attaching to a conviction as per Section 12 of the Act. This conclusion cannot be sustained in law for the reason that only after finding the accused guilty of the offence, the order of release on Probation comes into existence and in this regard, the decision of the Apex Court in Divisional Personnel Officer vs. T.R. Challappan, reported in AIR 1975 SC 2216, is relevant and extracted below.

"11. These provisions would clearly show that an order of release on probation comes into existence only after the accused is found guilty and is convicted of the offence. Thus the conviction of the accused or the finding of the Court that he is guilty cannot be washed out at all because that is the sine qua non for the order of release on probation of the offender. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. This clearly shows that the factum of guilt on the criminal charge is not swept away merely by passing the order releasing the offender on probation. Under Sections 3, 4 or 6 of the Act, the stigma continues and the finding of the misconduct resulting in conviction must be treated to be a conclusive proof. In these circumstances, therefore, we are unable to accept the argument of the respondents that the order of the Magistrate releasing the offender on probation obliterates the stigma of conviction."

It is now well settled that the Court while invoking Section 3 or 4 of the Probation of Offenders Act, does not deal with the conviction and it only deals with the sentence which the offender has to undergo and instead of sentencing the offender, the court releases him on good conduct and the conviction remains untouched and the stigma of conviction is not obliterated. (Union of India and others vs. Bakshi Ram □ AIR 1990 SC 987)

7. The next finding of the Industrial Tribunal is that no enquiry was held by the Management while removing the second respondent from service under Rule 14(1) of the Railway Servants (Discipline & Appeal) Rules, 1968 and hence the removal is bad in law as per the decision of the Apex Court in Divisional Personnel Officer vs. T.R. Challappan, reported in AIR 1975 SC 2216. In the above decision, the Apex Court while considering Rule 14(1) held that the word 'consider' in the last part of Rule 14 merely connotes that there should be active application of mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of penalty to be imposed on the delinquent employee on his conviction on a criminal charge. The above interpretation of the word 'consider' in Rule 14 in Challappan's case again came up for consideration before the Constitution Bench of the Supreme Court in Union of India vs. Tulsiram Patel □ AIR 1985 SC 1416. The Constitution Bench declared that interpretation as incorrect and over ruled the decision in Challappan's case

in this regard. The relevant portion of the judgment of the Constitution Bench is extracted below for better appreciation.

"114. It is thus obvious that the word "consider" in its ordinary and natural sense is not capable of the meaning assigned to it in Challappan's case. The consideration under Rule 14 of what penalty should be imposed upon a delinquent railway servant must, therefore, be ex parte and where the disciplinary authority comes to the conclusion that the penalty which the facts and circumstances of the case warrant is either of dismissal or removal or reduction in rank, no opportunity of showing cause against such penalty proposed to be imposed upon him can be afforded to the delinquent government servant.

115. The decision in Challappan's case (AIR 1975 SC 2216) is, therefore, not correct with respect to the interpretation placed by it upon Rule 14 of the Railway Servants Rules and particularly upon the word "consider" occurring in the last part of that rule and in interpreting Rule 14 by itself and not in conjunction with the second proviso to Article 311(2)."

8. In the present case, the second respondent has been removed from service invoking the power under Rule 14 of the Railway Servants (Discipline & Appeal) Rules, 1968. The disciplinary authority, before passing the final order, gave an opportunity to the second respondent for making representation with regard to the penalty and the second respondent availed that opportunity and after considering the representation, the disciplinary authority held that the conduct of the second respondent which led to the conviction on the criminal charge make his retention in public service undesirable and passed an order of removal from service. Therefore, this finding of the Industrial Tribunal that removal is bad on account of non holding of enquiry is erroneous and liable to be set aside.

9. The learned counsel for the second respondent further contends that the authority which imposed the penalty on the second respondent is not competent to impose that penalty. As already seen, the second respondent against the order of removal has preferred an appeal and review also and in none of those proceedings he has challenged the order of removal as unsustainable on account of lack of authority to impose the penalty. From the submission of the learned counsel for the petitioner, it is clear that the penalty has been imposed by proper disciplinary authority and hence this contention of the second respondent is devoid of merit.

10. Lastly, the counsel for the second respondent contended that Section 11(A) of the Industrial Disputes Act will be applicable to be facts of the present case. This contention is also misconceived for the reason that the order of discharge or dismissal of a workman pursuant to a domestic enquiry does not arise in this case. As already seen, the disciplinary authority has exercised the power conferred on it under Rule 14 of the Railway Servants (Discipline & Appeal) Rules, 1968 on the ground of conduct of the second respondent which led to his conviction on a criminal charge.

11. Looking at any angle, the Award of the Industrial Tribunal cannot be sustained and the petitioner is entitled for the relief sought for in the writ petition.

12. In the result, the writ petition is allowed as prayed for. No costs. Having regard to the facts and circumstances of the case, the amount that has been paid to the second respondent pursuant to interim order of this Court need not be recovered.

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To:

1. The Presiding Officer,
Industrial Tribunal,
Madras.

2. The General Manager,
Integral Coach Factory,
Madras-600 038.

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